IN THE HIGH COURT OF CHHATTISGARH JUDICATURE AT BILASPUR

WRIT PETITION NO. 3512/2004

Smt. Ajra Begum,
W/o. Late Mohd. Shakeel ,
aged about 35 years,
Municipal Councilor,
Ward No.-6-Mohanpara, Akaltara,
Tahsil and DistrictJanjgir - Champa,
(C.G.)

PETITIONER

VERSUS

1. State of Chhattisgarh,
Department of Urban Administration and Development,
Through its Principal Secretary
Mantralaya, D.K.S. Bhawan, Raipur (C.G.)

2. District Collector,
Janjgir- Champa,
[The Prescribed Authority
Under Section 3 (26) of the
Municipalities Act,].

3. Joint Director,
Urban Administration and Development,
Raipur(C.G.)

4. Chief Municipal Officer,
Municipal Council, Akaltara,
Distt. Janjgir-Champa (C.G.)

5. Imran Khan,
Vice President,
Municipal Council Akaltara,
(presently Holding Post of President),
Municipal Council, Akaltara,
Distt. Janjgir-Champa (C.G.)

RESPONDENTS

(4)

WRIT PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE ORDER(S)/DIRECTION(S)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.3512/2004 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	25.11.2004 Shri Pankaj Shrivastava, counsel for the petitioner. Shri N.K. Agrawal, Dy. Advocate General for respondents No. 1 to 3. Shri Saurabh Sharma, Advocate appears on behalf of Shri Sanjay K. Agrawal, counsel for respondent No. 4. Shri Rajeev Shrivastava, counsel for respondent No. 5. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India questioning the legality, propriety and correctness of the order-dated 19.2.2004 passed by respondent No.3, whereby respondent No.3 has nominated respondent No.5 to look after the work of the President of Municipal Council, Akaltara. Brief facts, leading to filing of this writ petition are that one Smt. Pushpa Soni was elected as President of Municipal Council, Akaltara in the year 1999, however, she could not furnish the account of election expenses in accordance with law. Therefore, she was declared disqualified by the Election Commission of Chhattisgarh, as a result of which the post of President, Municipal Council, Akaltara fell vacant and against that post, respondent No.5 has been nominated by respondent No.3 to look after the work of President. The challenge in this petition by the petitioner is that the post of President, Municipal Council, Akaltara is reserved for woman of OBC category and since the petitioner is the only elected	

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित – 2 –	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

woman candidate from the OBC category, therefore, she is entitled to become the President as per proviso to sub-section (2) of Section 37 of the Chhattisgarh Municipalities Act, 1961. Whereas the arguments advanced by learned counsel for respondent No.5 is that as per sub-section (1) of Section 37 of the Act the State Government is required to forthwith inform the Election Commission for filling up the vacancy and the Election Commission, in turn the Commission is required to conduct the Election for filling up the vacancy. Further argument of learned counsel for respondent is that as per the proviso of sub-section (1) of Section 37 of the Act if the remaining period of that term of the Municipal Council is less than 6 months, such vacancy shall not be filled-in.

If we look into sub-section (1) of Section 37 of the Act which envisages that "*as soon as the office of the President or a seat of Councillor elected from ward becomes vacant or is declared vacant or the election of the president or the Councillor, as the case may be, is declared void, the State Government shall forthwith inform the State Election Commission for filling up the vacancy and the person so elected shall hold the office of the president or councillor, as the case may be only for the remaining period of the council.*" Whereas sub-section (2) of Section 37 of the Act envisages that " *until the vacancy in the office of president is filled under sub-section (1), all the powers and duties of the president shall be performed by such elected councillor as the State Government may nominate in this behalf: Provided that if the office of the President is reserved under Section*

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

29-B, the President shall be nominated from the elected Councillors belonging to such reserved category."

Therefore, the present case falls under sub-section (2) not under sub-section (1) of Section 37 of the Act, as respondent No.5 has not been elected under sub-section (1) but he has been asked to perform the duty of the President under the provisions of sub-section (2) of Section 37 until the vacancy is filled up as per the provisions of sub-section (1). Therefore, the State Government is required to fill up the vacancy of the President as per the provisions of sub-section (2).

Learned counsel for respondent No.5 further argued that respondent No.5 is discharging the functions as per the provisions of Section 52 of the Act. But the arguments advanced by learned counsel for respondent No.5 is contrary to the record available in the matter. For discharging functions as per Section 52 no order is required from the Government. As per sub-section (c) of Section 52 in casual vacancy the Vice-President cannot discharge the function of the President. Here, on account of disqualification incurred by the elected President vacancy has fallen and that is a clear casual vacancy which is required to be filled-in by adopting the procedure as envisaged in sub-section (1) of Section 37 of the Act and till then under sub-section(2) of Section 37 the Government is required to fill-up that vacancy by nominating an elected Councillor from the same category or caste for which the post of the President is reserved for. Even if the remaining period of the Council is less

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

than six months, then also that vacancy is to be filled up as per sub-section (2) of Section 37 of the Act. The proviso to sub-section (1) says that if the period is less than 6 months then that post will not be filled up, but there is no such proviso added to sub-section (2) and Section 52 has no application in the facts and circumstances of the case.

In the result, the petition is allowed. The order-dated 19.2.2004 (Annexure P-2) is quashed. The respondent No.1 and 3 are directed to pass orders in accordance with law.

Certified copy as per Rules.

Sd/-
L.C. Bhadoo
Judge

Sunita

[पीछे देखिये